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February 7, 2019

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Re: *Kanter v. Whitaker*, No. 18-1478 (oral
argument held September 7, 2018):
Rule 28(j) Submission of Feb. 5, 2019

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, counsel for appellant Rickey I. Kanter responds to the U.S. Department of Justice's notice of supplemental authority dated February 5, 2019. The D.C. Circuit's decision in *Medina v. Whitaker*, No. 17-5248 (Jan. 18, 2019) does not alter the appropriate analysis in this case. The D.C. Circuit's holding excluding felons from the scope of the Second Amendment's protections relied upon arguments that this Court has already considered and rejected. (*See* Reply Br. 9-10.)

Additionally, the D.C. Circuit recognized that there is an "ongoing debate among historians about the extent to which the right to bear arms in the founding period turned on concerns about the possessor's virtue." (Op. at 12-13 (quoting *United States v. Rene E.*, 583 F.3d 8, 15 (1st Cir. 2009)).) Under this Court's jurisprudence, unless the historical record is clear, the Court must proceed to intermediate scrutiny. (Appellant's Opening Br. 13; Reply Br. 10.)

Finally, the D.C. Circuit's decision improperly ties the intermediate scrutiny inquiry to the status of being "law-abiding" and "responsible" (Op. at 14), instead of the risk of violence that this Court has held satisfies the government's important objective in passing felon disarmament laws. (Appellant's Opening Br. 20-22.) Under the D.C. Circuit's opinion, the "felon" label is enough. As explained in Mr. Kanter's briefing, this cannot be the case. (Appellant's Opening Br. 24-25; Reply Br. 12-14.)

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Thus, undersigned counsel respectfully submit that *Medina v. Whitaker* is inapposite.

Yours very truly,

s/ Monica A. Mark

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CERTIFICATE OF SERVICE

The undersigned, counsel for the Plaintiff-Appellant Rickey Kanter hereby certifies that on February 7, 2019, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that counsel for Plaintiff-Appellant Rickey Kanter are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: February 7, 2019

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